FILED FEBRUARY 6, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 05-O-03000, 06-O-13379, 06-O-13586, 06-O-13933, 06-O-14570**
KHOSRO REGHABI	)	
Member No. 206339	)	**DECISION**
A Member of the State Bar.	)	

I. INTRODUCTION

Respondent is charged here with wilfully violating (1) rule 3-110(A) of the Rules of Professional Conduct[1] (failure to perform with competence) in two separate matters; (2) rule 4-100(B)(1) (failure to notify client of receipt of client funds); (3) rule 4-100(B)(3) (failure to render accounts of client funds); rule 4-100(B)(3) (failure to pay client funds promptly; (4) Business and Professions Code section 6106 (moral turpitude-misappropriation)[2]; (5) section 6106 (moral turpitude- unauthorized endorsement); (6) rule 4-100(B)(4) (failure to pay client funds promptly); (7) section 6068(m) (failure to inform client of significant developments); and (8) rule 3-700(D)(1) (failure to release client file).

The court concludes that he is culpable of only one of those alleged violations, to which he previously stipulated, and recommends discipline as set forth below.

[1] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

[2] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

II. PERTINENT PROCEDURAL HISTORY

A Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 18, 2007. On March 3, 2008, respondent filed his response to the NDC. On April 4, 2008, the case was scheduled for trial on August 25, 2008, with a four day estimate.

On April 25, 2008, the State Bar filed a motion to dismiss without prejudice Counts Two through Six of the NDC in the interest of justice. No opposition to that motion was filed by respondent, and the motion was granted on May 21, 2008. Thereafter, the State Bar notified the court of its intent to delete certain allegations of the original NDC. As a consequence, the State Bar was ordered to file an amended NDC. Ultimately, a Second Amended NDC was filed, to which respondent's prior response was deemed to apply.

A seven-day trial, commencing on August 25, 2008, was completed on September 11, 2008, followed by a period of post-trial briefing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Except as specifically noted below, the following findings of fact are based on the stipulation of undisputed facts and conclusions of law previously filed by the parties and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on March 20, 2000, and has been a member of the State Bar at all relevant times.

Basic Background Facts

Although these individual cases involve different clients, they all share the common catalyst of Dr. Farzad Tayebaty (Dr. Tayebaty), a chiropractor. Dr. Tayebaty and respondent have known each other for many years. Over the course of those years, respondent has been a friend, a source of business, and an attorney for Dr. Tayebaty. In turn, Dr. Tayebaty was a client

and a referral source of business for respondent, and was often the treating chiropractor for respondent's personal injury clients. For those clients, respondent would routinely end up collecting settlement monies for the clients, which would then be subject to a lien filed by Dr. Tayebaty to secure payment for his services.

After respondent became the attorney for Dr. Tayebaty, the situation developed where respondent would be holding money in his client trust account that was subject to a medical lien from Dr. Tayebaty, while Dr. Tayebaty at the same time had a obligation to pay money to respondent to cover legal fees and costs incurred in other matters on Dr. Tayebaty's behalf. Rather than go through the mechanics of each office issuing a check to the other, respondent and Dr. Tayebaty agreed, in writing, that respondent would be contractually entitled to take those funds of specified clients that were subject to a Dr. Tayebaty lien and pay it to himself to reduce Dr. Tayebaty's outstanding legal bills ("assignment agreements"). Where the money was used for this purpose it was understood that the client's obligation to pay the prior medical bills would be satisfied (at least to the extent of the offsetting reduction). For those clients who were subject to the agreement, respondent notified them of the arrangement.

Unfortunately, Dr. Tayebaty and respondent had a falling out at some point after this arrangement had been put into place. Dr. Tayebaty owed respondent approximately $40,000 in overdue legal bills at the time. In January 2006, Dr. Tayebaty issued a $5,000 check to respondent to cover costs associated with a case respondent had been handling for the doctor, and then stopped payment on the check. More significant to this proceeding, Dr. Tayebaty began falsely disclaiming that he ever signed any of the assignment agreements and began contacting clients who were subject to the assignments to claim that they owed him money.[3] He told them

[3] The conduct and courtroom demeanor of Dr. Tayebaty both operated to substantially undermine his credibility in his dispute with respondent over the medical liens. His testimony regarding the absence of any agreements with respondent was not convincing. To support Dr.

that he had never received any money by respondent from the prior settlements, despite the fact that respondent had been reducing the amount of the doctor's outstanding bills by the amounts of the offsets. Dr. Tayebaty repeatedly threatened to sue these clients to recover the entire amount of the past bills unless the clients went after respondent. He encouraged them to file complaints with the State Bar, and indicated to at least some of the clients that he would not sue them if they made such a complaint.

Predictably, these actions by Dr. Tayebaty resulted in numerous clients filing complaints with the State Bar. As a result of the numerous complaints, this action was filed. In one cases (05-O-03000), respondent realized during the State Bar's investigation of the matter that his office practices had not complied with State Bar requirements. Even before charges were filed he voluntarily attended the State Bar's Client Trust Accounting School and he then stipulated to culpability in that one matter well before trial. As will be discussed more fully below, the remaining charges against respondent are devoid of merit. The court's findings in each of the actions are set out more fully below.

Case No. 05-O-03000

The following findings with regard to case no. 05-O-03000 are based solely on the stipulation of facts and culpability previously filed by the parties. Respondent was represented in that stipulation, and during trial, by Michael G. Gerner.

Tayebaty's testimony that he did not sign the lien agreements, Dr. Tayebaty's office assistant was put on the stand. She testified that the signatures on the agreements did not appear to be his. The weight of that testimony was substantially negated, however, when she also testified that signatures that Dr. Tayebaty had written in the courtroom just prior to her being called to testify (Exh. JJJJ) also did not appear to be his.

Facts

In August 2002, Samad Monshizadeh (Monshizadeh) employed respondent to represent him in a personal injury matter. On August 2, 2002, Monshizadeh and respondent signed a retainer agreement that provided for a 45% contingency fee if suit was filed.

On September 17, 2002, respondent filed a complaint entitled *Samad Monshizadeh v. Joseph Aguiree* (the "*Monshizadeh* matter"), Los Angeles Superior Court case no. 02T03457. Respondent sent Monshizadeh to Dr. Tayebaty for medical treatment.

Prior to Monshizadeh's employment of respondent, Monshizadeh was treated by Dr. Romina Ghassemi, D.C. ("Dr. Ghassemi"). Respondent knew that Dr. Ghassemi treated Monshizadeh and that Monshizadeh had signed a lien. In 2003, respondent spoke with Dr. Ghassemi, who agreed to reduce her lien to $2,000. Respondent was not a signatory on Dr. Ghassemi's lien.

In June 2003, respondent settled the *Monshizadeh* matter. On July 28, 2003, GEICO sent respondent a $3,020.21 property damage check, payable to Monshizadeh and respondent. On October 17, 2003, GEICO sent respondent a second settlement check in the amount of $15,000, payable to Monshizadeh and respondent. In or about October 2003, respondent deposited both checks into his client trust account (CTA).

On or about December 24, 2003, respondent gave Monshizadeh an itemized accounting of the GEICO funds. Respondent's accounting listed the following disbursements: 1) attorney fees of $8,100; 2) $400 costs; 3) medical expenses $2,500 + $2,000 and; 4) $5,420 to Monshizadeh. On the accounting, respondent indicated that he would retain $2,000 in his trust account "until dispute with Dr. Ghassemi [wa]s resolved."

In January 2004, respondent paid out: 1) CTA check #5636, dated January 8, 2004, in the amount of $7,000, and payable to Monshizadeh; and 2) CTA check #5642, dated January 16,

2004, in the amount of $2,200, and payable to Dr. Tayebaty for medical services rendered to Monshizadeh.

On April 26, 2004, Dr. Ghassemi sent respondent a letter requesting payment of $2,000. Respondent did not pay Dr. Ghassemi.

Subsequent to April 2004, Monshizadeh requested that respondent pay Dr. Ghassemi's bills. Respondent did not respond to Monshizadeh's request that respondent pay Dr. Ghassemi.

Count 1 – Rule 3-110(A) (Failure to Perform with Competence)

Rule 3-110(A) provides that an attorney must "not intentionally, recklessly, or repeatedly fail to perform legal services with competence." By not providing Monshizadeh with an accurate accounting of his disbursements of settlement funds and not paying Dr. Ghassemi or otherwise explaining Monshizadeh's responsibility to pay Dr. Ghassemi, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).[4]

Case No. 06-O-13379

Facts

Dominique D. Hountondji, also known as Nouhoum Ousmane (hereinafter "Ousmane"), was frequently involved in vehicle collisions when he was a taxi cab driver in Los Angeles. He also was no stranger to the world of being a personal injury plaintiff. Dr. Tayebaty was no stranger to those lawsuits.

On February 21, 2002, Ousmane was involved in an automobile accident occurring when he was in stop-and-go traffic on the freeway. On the next day, he went to Dr. Tayebaty, who saw him more than a dozen times before declaring his medical problems resolved on April 10, 2002. Dr. Tayebaty's cumulative medical bill for those sessions was $1,915.00. Five days after

[4] As previously noted, Counts 2-6 were previously dismissed without prejudice at the request and/or agreement of the parties.

Dr. Tayebaty proclaimed Ousmane healed from the February 21, 2002, incident, he was treating Ousmane again for claimed injuries from another car accident.

In April 2002, Ousmane employed respondent to represent him in the February 2002 personal injury matter, having been referred to respondent by Dr. Tayebaty's office. In April 2002, respondent signed a lien in favor of Dr. Tayebaty for medical services provided to Ousmane. On April 29, 2002, Ousmane and respondent signed a retainer agreement that provided for a 45% contingency fee if suit were filed. On March 17, 2003[5], respondent filed a complaint entitled *Nouhoum Ousmane v. Maria Medina and Michael Medina* (the "*Ousmane* matter"), Los Angeles Superior Court case no. 03E02443.

In May 2005, respondent settled the *Ousmane* matter for $5,500. He did so with Ousmane's knowledge and consent. On May 19, 2005, Ousmane signed a settlement release of all claims. The signing of this release was witnessed by respondent's now former paralegal, who testified credibly at trial regarding Ousmane's participation in the settlement process. Delivery of a fully executed release was to defendant's insurer was, of course, required before the insurer would release to respondent the settlement proceeds. On the following day, May 20, 2005, Farmers Insurance Group ("Farmers") issued respondent a $5,500 settlement check, payable to Ousmane and respondent. This check was forwarded to respondent by Farmers' attorney on May 26, 2005. Ousmane signed the settlement check and, on June 3, 2005, respondent deposited it into his CTA.

At the time this settlement was reached, Dr. Tayebaty owed legal fees to respondent. On July 20, 2005, respondent and Dr. Tayebaty reached an agreement that respondent could retain the $1,915 portion of the *Ousmane* settlement subject to Dr. Tayebaty's medical lien. Respondent confirmed this agreement in a letter to Dr. Tayebaty that same day, and Dr. Tayebaty

[5] The stipulation of the parties incorrectly states that this suit was filed on March 17, 2002.

signed the letter to confirm his agreement. Thereafter, respondent wrote a letter to Ousmane, forwarding a check for $700, representing Ousmane's share of the settlement after the reductions for attorneys' fees, costs, and the medical lien.[6] The letter included a full accounting of how the settlement distribution amounts had been calculated. This letter was not returned to respondent's office as undeliverable. However, Ousmane never cashed the check.[7] Pursuant to the assignment agreement, respondent retained the $1,915 that had previously been subject to the lien and he offset Dr. Tayebaty's outstanding account by that amount.

Sometime after the above transactions, there was the falling out between Dr. Tayebaty and respondent. In March of 2006, Dr. Tayebaty's office notified respondent that Dr. Tayebaty had "authorized and directed" that respondent pay to Ousmane $1,100 of the $1,915 previously assigned by Dr. Tayebaty to respondent. At the time of this action by Dr. Tayebaty, he still owed substantial legal fees to respondent. When respondent was informed of this action by Dr. Tayebaty, he wrote a letter of protest to the doctor on March 31, 2006, referring to the fact that Dr. Tayebaty had previously agreed that the funds could be used by respondent to reduce Dr. Tayebaty's bill. The letter also complained that Dr. Tayebaty was refusing to talk with respondent on the phone about the situation. The letter concluded with respondent's statement that, although he disagreed with Dr. Tayebaty's action, he would nonetheless pay the additional money to Ousmane if Dr. Tayebaty did not provide a countermanding instruction by April 7, 2006. None was given. Arrangements were instead made for Ousmane to come into the office. During this process it was discovered by respondent that Ousmane had not yet cashed the prior $700 check.

[6] Respondent kept a photocopy of the check in his file. It was check number 5785, bearing a date of August 2, 2005.

[7] During his testimony, Ousmane referred several times to being out of the country for extended periods while the case was pending and before April 2006.

On April 8, 2006, Ousmane went to respondent's office and received a check for $1,800, representing the original $700 and the additional $1,100.[8] Respondent once again provided Ousmane with a letter showing how the distribution amount had been re-calculated. It specifically referred to the fact that the check included "an additional $1,100 from medical lien which you are receiving on behalf of Farzad Tayebaty D.C." Respondent then had Ousmane sign a form his office prepared, acknowledging acceptance of the $1,800 as a full and final settlement.

In the following months, Ousmane and respondent continued to work together on various cases brought by Ousmane. Ousmane also referred other clients to respondent during this period. Ousmane's e-mail correspondence with respondent during this time was friendly and made no reference to any lack of knowledge by Ousmane in May 2005 of the settlement occurring at that time.

Nearly three months later, on July 5, 2006, Dr. Tayebaty wrote a letter to respondent regarding the *Ousmane* matter. The letter asked whether the case had settled, asked for a copy of the settlement draft, and threatened to turn Ousmane's bill over to collection if respondent did not respond within 5 days. The letter included a "proof of service." Dr. Tayebaty was well aware of the prior *Ousmane* settlement at the time this letter was written. His threat of turning the Ousmane bill over for collection was both unjustified and in bad faith.

As will be discussed more fully below, Ousmane's complaints to the State Bar about respondent came only after Dr. Tayebaty both falsely complained to Ousmane about not being paid from the prior settlement and threatened to sue Ousmane if he did not file a complaint with the State Bar. At the same time, because of the actions of Dr. Tayebaty, Ousmane actually received $1,100 more money from the settlement than that to which he was necessarily entitled.

[8] This check was also drawn on respondent's CTA. In contrast to the original $700 check (#5785), issued in May 2005, this check was numbered 5905.

Count 7 - Rule 4-100(B)(1) (Failure to Notify of Receipt of Client Funds)

Rule 4-100(B)(1) provides that a member shall promptly notify a client of the receipt of the client's funds, securities, or other properties.

The NDC alleges that respondent settled the *Ousmane* matter without Ousmane's knowledge or consent, received the settlement funds without telling Ousmane of the settlement, deposited the settlement check by falsely signing Ousmane's name to both it and the required settlement document, and then hid the money until questioned by Ousmane about the status of the action in April of the following year. According to the NDC, it was only after Ousmane called respondent in April 2006 that respondent told him that the case "just settled" and "requested that Ousmane come to the office to sign a release form and pick up his settlement check." The NDC also alleges that Dr. Tayebaty was telling Ousmane at this time that Ousmane then owed him "$2,815".

Respondent testified credibly and accurately that none of these charges are true. His testimony was corroborated by the testimony of his former paralegal, by the paperwork generated at the time, and by the activities and actions of respondent and Ousmane after the April 2006 final distribution of the funds. There was also no apparent motivation for respondent to have acted in the manner that is alleged. Under the State Bar/Ousmane scenario, respondent was hiding money from Ousmane for no apparent reason (it stayed at all times in his CTA) during a time when Ousmane testified that he and respondent were handling and resolving other matters together. Then, when Ousmane inquired about the status of the action, respondent (according to the State Bar) unilaterally decided to pay Ousmane some $1,100 more than he was entitled, money that was subject to an existing medical lien held by Dr. Tayebaty, his own client.

The only evidence possibly supporting the charges of the NDC are <u>portions</u> of the testimony of Ousmane. However, his testimony lacked coherency, conviction, credibility, and

candor. He testified to many facts that were demonstrably incorrect or inconsistent, and he frequently claimed a self-serving lack of memory about events that he would be expected to remember. To its credit, the State Bar acknowledged in its post-trial briefing that Ousmane's demeanor as a witness was sub-par: "It is true that Ousmane in many instances could not recall certain facts. It is also true that his demeanor on occasion was somewhat contemptuous. The Court could and should consider his demeanor in assessing his credibility. (Evidence Code section 780(a),(c).)" (Reply, pp. 4-5.) The court did ---and found that it was woefully lacking.[9]

Ousmane's testimony frequently also did not correlate with the factual allegations of the NDC. The NDC alleges: *"A year later, in or about early April 2006, Ousmane called respondent for a status update on his personal injury matter. Respondent represented to Ousmane that his case just settled and requested that Ousmane come into the office to sign a release form and pick up his settlement check."*

Rather than learning of the need to sign settlement documents only after calling to inquire about the action's status (as alleged in the NDC), Ousmane testified at trial (in one version of his story) that he was called by respondent's office regarding the need to sign settlement documents. Then, during another portion of his testimony, he testified that these settlement documents were mailed or faxed to him to execute, and that he was unable to sign them for some time because he was somehow unavailable.[10] However, during another version of what had happened, he recalled being informed by respondent that there was a pending settlement offer, being told that he should accept it because the defendant was not going to offer any additional money, and then agreeing to the settlement. Rather than date these discussions as occurring in conjunction with

[9] It was also demonstrated on cross-examination that Ousmane's testimony during the underlying personal injury action was not honest.

[10] Ousmane indicated that he had settled other cases with respondent prior to April 2006, but had never been asked to sign any settlement documents, although he had received his checks for those settlements. Then, during other times in his testimony, he stated that he had always gone in on the prior settlements and signed settlement documents.

settling the case in May of 2005, Ousmane testified that this all occurred on the day before he went to the office on April 8, 2006 and picked up the settlement check. How respondent would have had the settlement money from the insurance company so quickly and without any signed settlement documents went unexplained. He then said he got suspicious at this meeting about when the settlement had occurred because the documents he was being asked by respondent's secretary to sign in April 2006 contained discrepancies in the dates, at which point he asked to see the settlement draft that had been received.[11] However, the only document he went on to identify as having been signed by him at the April 2006 meeting was the April 2006 release of all claims prepared by respondent's office, not the settlement release prepared for Farmers. The only dates contained in the April 2006 release are the handwritten dates showing when it was being signed in April.[12] Rather than explain how this document had "discrepancies" which caused him to become suspicious, Ousmane instead testified that he did not recall reading the document before signing it.

According to the further allegations of the NDC: "*On or about June 1, 2006, Ousmane went back to respondent's office to retrieve his file. After obtaining his file, Ousmane discovered that the release form that he had signed had been backdated and that his personal injury case had settled in or about May 2005.*"[13] Once again, Ousmane testimony at trial was at complete odds with the allegations of the NDC. When shown the Farmers' release form at trial, Ousmane

[11] The dates on the settlement document and the check from Farmers corroborate respondent's testimony that the insurance company did not release the settlement funds to respondent until after the executed release had been returned to it.

[12] Actually, Ousmane initially denied at trial ever seeing even this document as well, but then agreed on further questioning by the State Bar's counsel that he had seen it.

[13] The version of facts alleged in the NDC also is not coherent. The case had settled in May 2005, and the agreement had already been funded by the carrier. There would have been no reason to have Ousmane sign a release for Farmers in April 2006, other than possibly to have him believe that the case had just settled. If that were the case, it would be illogical and unnecessary to backdate the agreement he had signed in April. To the contrary, one would expect that the make-believe release would have been given the April 2006 date.

did not testify that this was the document he had found when he obtained his file. Nor did he state that he had signed the document and discovered, upon obtaining the file, that it had been back-dated. His recollection at trial was that he had never signed the document.

Much later during his testimony, Ousmane volunteered yet another version of what had happened. Because this version parallels the testimony of one of the other complaining witnesses, it is viewed by the court as having far more connection with what actually happened. In this version, Ousmane recalled that he raised no issues about the settlement until well after the April 8, 2006 date, and then only when Dr. Tayebaty called him to complain about not being paid. Dr. Tayebaty told Ousmane in that conversation that he was unaware that the case had even been settled, clearly an untrue statement. Ousmane then communicated with respondent about the situation and was told by respondent that Dr. Tayebaty was not entitled to receive any additional money from the settlement. According to Ousmane, when he reported respondent's position to Dr. Tayebaty, the doctor told him that if respondent did not pay the prior bill, Ousmane would have to pay it. Dr. Tayebaty then encouraged Ousmane to raise issues about the circumstances of the settlement. It was only after this conditional threat of a lawsuit by Dr. Tayebaty that Ousmane began making accusations against respondent.

The State Bar has failed to present clear and convincing evidence of a wilful violation of rule 4-100(B)(1) by respondent as alleged in the NDC, and the court finds none. This count is dismissed with prejudice.

Count 8 - Rule 4-100(B)(3) (Failure to Render Accounts of Client Funds)

Rule 4-100(B)(3) provides, *inter alia*, that a member shall maintain complete records of all funds, securities, and other properties coming into the possession of the member or law firm and render appropriate accounts to the client regarding them.

The NDC alleges that when Ousmane went to respondent's office on or about April 6 [sic], 2006, and received the $1,800 settlement check, he asked for both his file and an accounting. It further alleges that respondent "did not provide Ousmane with an accounting".

Respondent testified credibly and accurately that none of these charges is true. His testimony was corroborated by the paperwork generated at the time (including the written accounting dated April 7, 2006) and by the activities and actions of respondent and Ousmane after the April 2006 final distribution of the funds.

The charges of the NDC are not also supported by any clear and convincing evidence. First, there was no testimony by Ousmane that he ever requested any sort of an accounting. Ousmane also did state that he requested at the April 2006 meeting to be provided with his file. When asked whether there was any discussion with respondent about how the $1,800 amount of the check was calculated, Ousmane merely testified, "No." He then went on to state that he was "indifferent" about the amount.

His testimony supporting the NDC allegation that no accounting was provided was also unconvincing. With regard to the April 7, 2006 letter/accounting, Ousmane's testimony was equivocal. At the outset of Ousmane's testimony, when asked by the State Bar's counsel whether he had ever seen "Exhibit 22", Ousmane mistakenly turned to Exhibit 21 (the April 7, 2006 accounting letter) and testified that he "may have". Later, he only said that he "didn't recall" seeing it but "didn't think so."[14]

In its post-trial brief, the State Bar argues that respondent should be found culpable of the charges alleged in Count 8, based on claimed deficiencies in the July 21, 2005 accounting (Exhibit 20). The State Bar, in its post-trial brief, made the following argument: *"Inherent in*

[14] Similarly, Ousmane did not categorically deny receiving the prior accounting dated July 21, 2005. When asked whether he had previously seen it, he only indicated that he did not recall.

rendering an "appropriate" accounting is that it is an accurate accounting. But here, Ex. 20 inaccurately states that there was a check enclosed for $1,700 when it also indicates the amount of client proceeds was $700. Then, it purports that the medical lien had been "reduced" to $1,915. But, Dr. Tayebaty's bill in the Ousmane matter was $1, 915 (Ex. PP) and was not reduced." (Brief, pp. 4-5.)

This contention by the State Bar is without merit.

First, this entire argument by the State Bar ignores the charging allegations of the NDC. The NDC only alleges that Ousmane requested an accounting in April 2006 and that respondent then failed to ever provide one. It makes no reference to any request for an accounting in 2005, and Ousmane did not testify that he then requested one. Further, the NDC includes no accusation that a violation of rule 4-100(B)(3) occurred because the accounting provided was somehow inadequate. That theory of culpability was not advanced until after the trial was completed. Had the State Bar wanted to impose culpability based on that theory, it needed to put respondent on notice of what he needed to defend. It did not do so, even though it was allowed to amend its NDC right up to the first day of the trial. Nor was there any apparent disclosure of this theory as an uncharged violation during the pretrial conference exchange of information, notwithstanding this court's mandatory disclosure order of April 4, 2008.

Second, the court further finds that the July 21, 2005 accounting was not made "inappropriate" because the letter mistakenly referred to the enclosed check as being for $1,700, rather than $700. The accounting went through each of the numbers used to calculate the distribution to Ousmane and concluded with the statement that "Total proceeds to you: $700.00." This was a correct accounting. The "$1,700" figure in the letter was clearly a typo. The typo appeared only in the portion of the letter stating, "Enclosed please find a check in the amount of $1,700.00." This was not part of the accounting. Further, the check was enclosed and clearly

was only for $700. To find that such a typographical error constituted a wilful violation of rule 4-100(B)(3) would be unjustified and unprecedented.

Third, the State Bar's addition criticism of the July 21, 2005 accounting (that it referred to the $1,915 lien as being "reduced") runs afoul of its own NDC. In its brief, the State Bar argues that Dr. Tayebaty's bill was only for $1915, and that respondent could therefore not say that he had "reduced" the lien to $1,915. However, in the NDC, it is alleged that Dr. Tayebaty stated that he was owed $2,815. (Second Amended NDC, para. 41.) If this statement by Dr. Tayebaty was factually accurate, respondent cannot be faulted for saying that the lien had been reduced when Dr. Tayebaty had previously agreed to accept an offset amount of of $1,915.[15] On the other hand, for the State Bar to now contend that the medical bill was never more than $1,915, would signify that it is agrees with respondent that Dr. Tayebaty was being dishonest.[16]

For all of the above reasons, this court concludes that the State Bar has failed to present clear and convincing evidence of a wilful violation of rule 4-100(B)(3) by respondent as alleged in the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

Count 9 – Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)

Rule 4-100(B)(4) requires that an attorney "promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."

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[15] Because this theory of culpability was not revealed until after the trial, there was then no focused testimony or argument about it. The court notes, however, that respondent's letter to Dr. Tayebaty of July 20, 2005, specifically states that the doctor was then agreeing to accept $1,915 as a "reduced amount." (Exh. SS.)

[16] Respondent, in fact, seeks to have certain of the counts of case no. 06-O-13379 dismissed based on this allegation that the bill and/or lien was for $2,815. Under respondent's theory, this allegation means that the lien being asserted in this proceeding was for a debt arising out of injuries from a different accident, one for which respondent was not Ousmane's attorney. If that were the case, respondent would have no obligation to use the proceeds of the July 2005 settlement to pay that bill. Because this court is dismissing all of those counts for other reasons, it does not reach the merits of that contention.

The NDC alleges: *"By paying Ousmane his share of the settlement funds ten months after their deposit into Respondent's CTA; and not paying Dr. Tayebaty for the medical services that he had rendered to his client, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive."*

The court finds that the State Bar has failed to present clear and convincing evidence of any wilful violation by respondent of this rule.

There must be a request by the client for payment before there can be a violation of rule 4-100(B)(4). (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 850; *In the Matter of Steele* (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 708, 720; *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, 188.) With regard to Ousmane, there is neither an allegation in the NDC nor any testimony by Ousmane that he ever requested any payment of funds to himself prior to April 2006, when the funds were in fact paid to him. Moreover, respondent testified credibly and accurately that he communicated the May 2005 offer and settlement to Ousmane at the time and transmitted a settlement distribution check in the amount of $700 to him by mail shortly after resolving the issues of the existing medical lien with Dr. Tayebaty. His testimony was corroborated by the paperwork generated at the time and subsequently.

For respondent to be culpable of having failed to promptly pay funds to Dr. Tayebaty, it must be shown that Dr. Tayebaty had an enforceable right to receive that money. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal.State Bar Ct. Rptr. 234, 242.) This has not been done. Respondent testified credibly and accurately that he notified Dr. Tayebaty of the original settlement shortly after it had occurred and that an agreement was reached on July 20, 2005, authorizing respondent to retain the $1,915 portion of the settlement against which Dr. Tayebaty had a lien, crediting that amount against the bills owed to respondent by the doctor. There is no

evidence that respondent failed to honor this agreement and convincing evidence that he complied with it. Respondent did not fail to provide to Dr. Tayebaty that which the doctor was entitled to receive.

Finally, when respondent was notified by Dr. Tayebaty's office in March 2006, that Dr. Tayebaty was directing that $1,100 of the settlement proceeds then be paid to Ousmane, respondent promptly made the payment to Ousmane, notwithstanding respondent's apparent right to reject that instruction.

For all of the above reasons, this court concludes that the State Bar has failed to present clear and convincing evidence of a wilful violation of rule 4-100(B)(4) by respondent as alleged in this count of the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

Count 10 – Business and Professions Code Section 6106 (Moral Turpitude-Misappropriation)

The NDC alleges that the balance in respondent's CTA was $1,338.83 on November 18, 2005. Because Ousmane had not cashed his $700 check at that time, and no checks had been sent to Dr. Tayebaty for his $1,915 medical lien, the NDC alleges that more than $1,338.83 should have remained in the account.[17] From this the State Bar asks this court to conclude that respondent misappropriated Ousmane's money, an act of moral turpitude, in wilful violation of Business and Professions Code section 6106.

This contention by the State Bar lacks merit. The only money that was required to be in respondent's CTA in November 2005 was the $700 owed to Ousmane. The balance of the CTA

[17] The NDC actually charges that "$3,025" should have remained in the account on November 18, 2005, for the benefit of Ousmane. This figure was calculated by the State Bar by merely deducting respondent's attorneys' fees ($2,475) from the $5,500 settlement. This conclusion is incorrect because it ignores respondent's entitlement to reimburse himself for advanced costs, here $450. Ironically, had respondent allowed that $450 to remain in the CTA for six months after he became fully entitled to it, he might have exposed himself to a charge by the State Bar of commingling, a violation of this same rule 4-100.

was always greater than that amount. Respondent testified credibly and accurately that the $1,915 previously subject to the Dr. Tayebaty lien had been assigned to him by the doctor. Having become entitled to that money, he was both entitled and obligated to remove it from the CTA. (See Rule 4-100(A)(2).) That he did so demonstrates respondent's adherence to his professional obligations, not a disregard of them. This was not an act of moral turpitude.

The State Bar has failed to present clear and convincing evidence of a wilful violation of Section 6106 by respondent as alleged in this count of the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

Count 11 – Business and Professions Code Section 6106 (Moral Turpitude-Unauthorized Signature)

The NDC alleges that respondent committed an act of moral turpitude by forging Ousmane's signature on the May 2005 settlement check.

The State Bar has failed to present clear and convincing evidence in support of this allegation. Instead, respondent testified credibly and accurately that Ousmane signed both the release document and the subsequent settlement check. His testimony was corroborated by the paperwork generated at the time and by the credible and convincing testimony of respondent's former paralegal (a law school graduate), who witnessed the execution by Ousmane of the documents.

The only contrary evidence at trial was testimony by Ousmane, who denied signing the documents. That testimony lacked credibility and candor and was unconvincing.

The State Bar, in its post-trial brief, encouraged the court to compare the signatures on the May 2005 release and settlement check (which Ousmane now disclaims) with signatures known to be valid. It argues that the court, as the finder of fact, may and should use that comparison as a basis for concluding whether Ousmane signed the check and release. (Closing Brief, p. 4, fn. 3; Reply, p. 5.) The court has made that comparison, using the fee agreement

(which Ousmane agreed he signed) and the Dr. Tayebaty lien as the comparison documents. The four signatures are sufficiently similar to support respondent's recitation of what occurred; the comparison certainly does not support any conclusion that any of the signatures were forged.

The State Bar has failed to present clear and convincing evidence of a wilful violation of Section 6106 by respondent as alleged in this count of the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

Case No. 06-O-13586

Facts

In late 2003, Artur Vardanyan ("Vardanyan") employed respondent to represent him in an uninsured motorist matter. Vardanyan had taken a class in business law taught by respondent at a local junior college. Vardanyan and respondent signed a retainer agreement that provided for a 45% contingency fee.

Vardanyan was also seeing Dr. Tayebaty for the injuries associated with this accident. On February 25, 2004, respondent signed a lien in favor of Dr. Tayebaty for medical services provided to Vardanyan. Respondent, in turn, had an agreement with Dr. Tayebaty that Vardanyan would be one of those clients whose fees could be used by respondent to offset Dr. Tayebaty's bills.

Significantly, Vardanyan readily agreed at trial that he was told by respondent of this assignment agreement with Dr. Tayebaty at the time and agreed to it.[18] This statement by respondent to Vardanyan regarding the existence of the assignment agreement with Dr. Tayebaty took place, of course, before any issues arose with the State Bar or with Dr. Tayebaty. It was also at a time when Vardanyan could easily have confirmed the statement with Dr. Tayebaty, his treating chiropractor. That respondent was discussing with Vardanyan the assignment

[18] Vardanyan was called as a witness at the trial by the State Bar to testify as a complaining witness against respondent.

arrangement at that time, and seeking his approval of it, provides strong corroborating evidence that there actually was such an agreement and that respondent is not now making up a story because of this proceeding, as the State Bar contends.

During the time that Vardanyan was treating with Dr. Tayebaty, Dr. Parviz Salehi was subletting an office inside Dr. Tayebaty's office. In March 2004, when Vardanyan went for a scheduled appointment with Dr. Tayebaty, he was told by the doctor's staff that the doctor was not present but that he would be seen instead by Dr. Salehi. Vardanyan, who was then 20-years-old, assumed that Dr. Salehi was a member of Dr. Tayebaty's office. Instead, unbeknownst to Vardanyan, Dr. Salehi had his own practice and intended to be paid separately.

Months later, Dr. Salehi sent a medical lien to respondent's office. The lien was on the same form as the lien used by Dr. Tayebaty, had the same office address, and is difficult to distinguish from a medical lien from Tayebaty's office. Vardanyan never mentioned to respondent seeing a different doctor at Tayebaty's office, and respondent failed to notice the different name on the lien. On August 17, 2004, respondent nonetheless signed the lien in favor of Dr. Salehi.[19]

On March 22, 2004, 21st Century Insurance sent respondent a $465 check payable to Vardanyan for medical payments. On December 22, 2004, 21st Century sent respondent a $1,785.46 check payable to Vardanyan for medical payments. On January 28, 2005, 21st Century sent respondent a $10,000 check payable to Vardanyan for uninsured motorist recovery. On March 1, 2005, with Vardanyan's consent, respondent deposited the three 21st Century checks, totaling $12,250.46, into his CTA.

[19] Respondent stipulated that he signed the lien, although he does not recall doing so. The lien agreement was not contained in his file but was, instead, subsequently provided to him by the collection agency being used by Dr. Salehi.

On March 15, 2005, respondent sent Vardanyan a CTA check, #5762 in the amount of $4,550. Relying on his agreement with Dr. Tayebaty, he offset Dr. Tayebaty's bills with the portion of the settlement proceeds subject to Dr. Tayebaty's lien. However, he failed to pay any portion of the settlement to Dr. Salehi. Dr. Salehi had never forwarded to respondent either his medical report or the bill. Instead, the bill and medical report had only gone to Dr. Tayebaty, who also did not forward them to respondent. Dr. Salehi's normal office practice was only to send the report and bill to the attorney's office if it was requested by the attorney's office. There was no such request in this instance. Vardanyan had also never received a bill or report from Dr. Salehi.

After Vardanyan received the proceeds of the settlement, Dr. Tayebaty contacted Vardanyan to complain that he had not been paid any portion of the settlement proceeds. The doctor encouraged Vardanyan to file a complaint with the State Bar and told him that, if he did not, Dr. Tayebaty would go after him to collect the bill. Vardanyan then filed a complaint with the State Bar. Dr. Tayebaty then took no steps to file a collection action against him.

After the complaint had been made to the State Bar, Dr. Salehi then turned his bill over to a collection agency. He made no effort to request payment from respondent. The bill was for $580, reflecting a cost of $380 for the examination and $180 for a "medico legal" report. Neither respondent nor Vardanyan had hired Salehi to prepare such a report and the report was never provided to them by the doctor. Dr. Salehi, in fact, never had any contact with respondent. Neither Vardanyan nor respondent was aware that there was even a bill from Dr. Salehi until Vardanyan was contacted by the collection agency. Vardanyan then contacted respondent about the bill. Respondent, in turn, contacted Dr. Salehi and offered to pay the bill out of his own pocket. Because Dr. Salehi had assigned the account to the collection agency, Dr. Salehi merely referred respondent to that company. By then, however, the collection agency had taken Vardanyan's default. When respondent contacted the agency and offered to pay the bill, it

refused his offer. Respondent and Vardanyan then made the decision to challenge the bill and to have the default judgment set aside. Respondent has now done that successfully at no charge to Vardanyan, who expressed at this trial his continuing surprise and disagreement with ever being billed by Dr. Salehi and his appreciation for respondent's activities on his behalf. His family continues to use respondent as their attorney.

Count 12 – Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)

As previously noted, rule 4-100(B)(4) requires that an attorney "promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive." The NDC alleges Vardanyan "requested that Respondent pay his medical providers Dr. Tayebaty and Salehi. Respondent ignored Vardanyan's request."

The State Bar failed to present clear and convincing evidence to support these allegations. Quite the contrary, Vardanyan testified during the trial that he had never requested respondent to pay either Dr. Tayebaty or Dr. Salehi and that he complained to the State Bar only because Dr. Tayebaty had indicated that he would not pursue Vardanyan for the medical bills if a complaint against respondent were filed by Vardanyan with the State Bar. Vardanyan also stated that he has been happy with the work being done by respondent on his behalf, including respondent's work since Vardanyan's complaint was made to the State Bar.

Nor was there any testimony from Dr. Salehi that he made any request of respondent that his bill be paid. Dr. Salehi's testimony also corroborated respondent's testimony that neither the bill nor the report was ever sent to respondent or Vardanyan. Rather, he indicated that the bill would have gone with the report, with both documents being sent only to Dr. Tayebaty.

Given the unusual history of Dr. Salehi's lien, the absence of any demand that the bill be paid prior to the collection action becoming known, the issues raised by Vardanyan and

respondent regarding the amount of money actually owed to Dr. Salehi, and the steps that respondent took to resolve those issues after becoming aware of the bill, the court concludes that his conduct with regard to the Dr. Salehi lien did not constitute a wilful violation of rule 4-100(B)(4).

Finally, with regard to the alleged obligation to pay money to Dr. Tayebaty, respondent, as previously noted, had reached an assignment agreement with Dr. Tayebaty, transferring to respondent the right to receive that portion of the Vardanyan settlement proceeds subject to Dr. Tayebaty's medical lien. As such, respondent was entitled to retain those funds for himself and was no longer under any obligation to pay them over to Dr. Tayebaty. The only enforceable right held by the doctor was to receive a credit on the legal bills owed to respondent. There is no accusation or evidence that Dr. Tayebaty did not receive that credit.

For all of the above reasons, this court concludes that the State Bar has failed to present clear and convincing evidence of a wilful violation of rule 4-100(B)(4) by respondent as alleged in this count of the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

Case No. 06-O-13933

Facts

In August 2002, Mohammad Reghabi ("Mohammad") employed respondent to represent him in a personal injury matter. The claimed injuries arose out of a car accident, with Mohammad alleging that the female driver of the other car had physically attacked him after he had confronted her. There was no written fee agreement because Mohammad had failed to sign the agreement offered to him by respondent. Mohammad, an elderly gentleman, was also a frequent personal injury claimant. He had previously been represented by respondent in a personal action. He also went to Dr. Tayebaty to be treated for his claimed injuries.

On August 5, 2002, respondent executed a medical lien in favor of Dr. Tayebaty.

On April 14, 2003, respondent filed a complaint entitled *Mohammad Reghabi v. Cheryl Conhaim* ("the *Mohammad* matter"), Los Angeles Superior Court case no. 03T01062. The filing of the complaint was delayed because of the need for respondent to identify and locate the woman who had allegedly assaulted Mohammad. His client did not have her name and accused her of leaving the scene of the accident. He only had some information regarding a third-party witness, who respondent was also able to locate.

For a court appearance on December 15, 2003, respondent sent a contract attorney, Vahe K. Messerlian ("Messerlian") to appear in his place on behalf of Mohammad. Mohammad was not present. On December 16, 2003, Messerlian sent respondent an invoice for his court appearance, advising respondent of a trial date of July 26, 2004. Respondent received Messerlian's correspondence.

On May 11, 2004, defendant's counsel, David E. Robinson ("Robinson"), served a demand for exchange of expert trial witness information on respondent. Respondent received the demand. He did not thereafter disclose any experts.

On June 18, 2004, Robinson served a request for statement of witnesses and evidence on respondent pursuant to Code of Civil Procedure section 96. Respondent received the request. He did not inform Mohammad of it. Thereafter, respondent did not provide a response to the request by the due date of July 8, 2004. Instead, on July 19, 2004, he served a list of witnesses on Robinson.

On or about July 15, 2004[20], Robinson filed a motion in limine to exclude Mohammad's evidence pursuant to Code of Civil Procedure sections 96, 97, and 2034. That motion was never

[20] The stipulation of the parties mistakenly states that this motion was filed on June 16, 2004.

ruled on by the trial court, and there was no evidence that the court ever indicated any intent to grant it.

On the day of trial, respondent appeared but Mohammad did not. Without the testimony of Mohammad, respondent would have been unable to put on a prima facie case against the defendant. Respondent requested a brief continuance, which was denied. The court indicated that it was going to dismiss the action, not because of the motion to exclude evidence but because plaintiff's failure to appear would result in respondent being unable to establish a prima facie case of liability. The court, however, did not immediately dismiss the action. Instead, it sent the attorneys to see if they could reach a settlement of the action. Throughout this time respondent and his office were attempting to reach Mohammad. Unfortunately, they were unable to reach him.

During the course of the settlement discussions, an agreement was reached whereby the matter would be dismissed in exchange for defendant's agreement to waive costs. Respondent viewed this as a very favorable resolution for Mohammad for two reasons. First, Mohammad's absence from the trial as a witness meant that respondent would not be in a position to put on a prima facie case. Second, respondent feared that the case would have been lost even if Mohammad did appear and testify. Respondent's investigation had revealed that the recollection of the third-party witness identified for him by Mohammad actually supported the defense and disputed Mohammad's testimony that he had been assaulted by the female defendant. Respondent had also learned that there was another person in the defendant's car at the time of the incident, who would also dispute Mohammad's testimony that he had been assaulted. If Mohammad lost the case, he would, of course, be responsible for the defendant's costs. The defendant had previously served a Code of Civil Procedure section 998 offer of judgment.

After the settlement agreement was reached, it was communicated to the court, which then dismissed the matter with prejudice based on the settlement.[21] Respondent then went back to his office to continue to seek to get hold of Mohammad. When Mohammad was finally reached, he was apologetic about not being at court. He had been sent a letter regarding the time and location of the trial and had received follow-up voicemail reminders. Unfortunately, on the day of the trial he got confused and went to the wrong courthouse.

Count 13 – Rule 3-110(A) (Failure to Perform with Competence)

The NDC alleges: *"By not responding to Defendant's requests for exchange of expert witnesses and evidence; not filing a motion to set aside dismissal; not actively prosecuting the case on behalf of Mohammad; and exposing Mohammad to potential suit by his medical provider, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence."*

The State Bar has failed to present clear and convincing evidence that respondent wilfully violated his duty to perform legal services with competence as alleged in the NDC.

First, the evidence failed to show that respondent failed to "actively prosecute" Mohammad's action. Instead, it showed quite the contrary. Among the actions taken by respondent (individually or through his office) were the following: he successfully was able to identify and locate the defendant (whose name was unknown to Mohammad); he filed a timely complaint; he identified and interviewed witnesses; he prepared and defended Mohammad's

[21] Respondent had agreed to the settlement on his client's behalf. The NDC makes no accusation that his actions in settling the case were unauthorized or contrary to his ethical duties. Nor did the evidence show that his actions were unauthorized or unethical. The evidence further indicated that Mohammad was initially apologetic regarding his failure to get to the right courthouse and appreciative of respondent's actions in salvaging the situation. It was only later that Mohammad expressed unhappiness with the outcome or sought to blame respondent for it. In the interim he had discussed the matter with Dr. Tayebaty, who still wanted to have his bill paid and who eventually sued Mohammad to recover the bill.

deposition; he prepared for trial; he participated in attempting to mediate the case; and he arrived at court on the day it was set for trial. The problem was that his client, Mohammad, failed to do the same.

Respondent's admitted failure to disclose his trial evidence within the time guideline set out in Code of Civil Procedure section 96 does not constitute a wilful failure to perform with competence. Noncompliance with a time limitation does not necessarily establish per se a failure to act competently. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 46; *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 377.) Respondent testified without contradiction that it was common practice in limited jurisdiction cases in that court for parties to provide information after the date prescribed in the statute, and there was no evidence that the trial court in that matter believed or acted otherwise. In fact Code of Civil Procedure section 97, subp.(b)(5), makes specific provision for late compliance, such as occurred here. Given the substantive problems that the evidence held regarding the merits of Mohammad's case, respondent's strategy of withholding disclosure of the evidence until the last moment cannot be viewed as an act of wilful incompetence, especially since no prejudice resulted from it.

The same analysis is also true with regard to respondent's decision not to disclose any experts. The State Bar offered no evidence as to what sort of expert should have been disclosed. This was a minor vehicle accident with a related assault. If there was a particular reason why expert testimony was needed, such that it would have been incompetent for respondent not to have disclosed and called such an expert to testify, that reason was neither explained nor evident to this court. Apparently the State Bar needed to disclose and call an expert to testify to that reason. It did not do so.

Even a decision not to call Dr. Tayebaty as a percipient witness would not necessarily have been a wrong decision. Again, there was no testimony or evidence as to why his testimony would have been necessary or irreplaceable, and there are many potential reasons why a sound strategic reason might be made by a trial attorney not to call a treating doctor as a witness at trial. Among these reasons are what the doctor may know about the extent, duration and source of the claimant's actual injuries; potential weaknesses in the doctor's apparent competence or integrity; and/or the likelihood that the doctor will be shown to lack credibility. Based on the record in this case, including Dr. Tayebaty's appearance as a witness in it, the court cannot and does not conclude that the failure to have Dr. Tayebaty present to testify in the action was an act of incompetence.

Next, the accusation in the NDC that respondent "exposed" Mohammad to a potential suit by Dr. Tayebaty is also devoid of supporting proof. Mohammad went to Dr. Tayebaty because he felt he had injuries that needed medical attention. He did not testify to the contrary. When he went to the doctor, he became personally responsible to pay the resulting medical charges. That was true whether he won his case or not. Respondent was not a personal guarantor of either Mohammad's debt to the doctor or of the defendant's liability to Mohammad.

Finally, there is no basis to conclude that respondent failed to act competently in not seeking to set aside the dismissal. That dismissal resulted from a settlement, not a decision by the court to dismiss for lack of prosecution. Respondent was a participant in the process in which the settlement was reached and the dismissal requested. If Mohammad wished to repudiate that agreement, it could well have been a strategic mistake for respondent to have represented him in that effort and was likely so. That is particularly true since respondent felt the settlement was a good one for Mohammad. The State Bar has presented no evidence that his

judgment in that regard was flawed. Nor did the State Bar present any evidence that there was any likelihood of success for a motion to set the dismissal aside.

The correspondence between the parties indicates that Mohammad consulted other attorneys regarding the possibility of taking legal steps to revive his action. The fact that no such steps were taken provides a strong indication that other attorneys concurred in respondent's assessment.

Based on this record, there is no clear and convincing basis for concluding that the respondent's conduct and omissions during the Mohammad action, as alleged in the NDC, constituted a wilful failure to act with competence. For all of the above reasons, this count is dismissed with prejudice.

Count 14 – Business and Professions Code Section 6068(m) (Failure to Inform Client of Significant Development)

The NDC alleges: *"By not informing Mohammad of Defendant's requests for exchange of expert witness, statement of witnesses and evidence; and not informing him of the trial date, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services."*

The State Bar has failed to provide clear and convincing evidence that respondent wilfully violated the duty under section 6068(m) to keep Mohammad informed of significant developments as alleged in the NDC.

Contrary to the allegations of the NDC, Mohammad testified that respondent did provide him with a copy of the request for expert disclosure while the case was pending. He also testified that respondent discussed the request with him on several occasions.

With regard to the State Bar's accusation that respondent failed to notify Mohammad of the trial date, the testimony of several credible witnesses and the explicit letter sent to respondent at the time provided convincing evidence that respondent and his office notified Mohammad in

advance of the trial date, both in writing and with telephone messages. ***In fact, during the trial of this matter, Mohammad remembered that he had received a voicemail message from respondent's assistant on the day before the trial, reminding him of the trial date.***[22] At one point in his testimony Mohammad also indicated that he had seen the letter from respondent's office telling when and where the trial was going to be held.[23] Shortly after the dismissal occurred, Mohammad indicated that he had just gone to the wrong courthouse.

Respondent stipulated that he did not advise Mohammad of the fact that he had received a Code of Civil Procedure section 96 request from the defendant for disclosure of witnesses and evidence. The receipt of such a specific request in this case, however, was not a significant development about which there was any need to timely notify the client. There was no indication that Mohammad had ever requested to be informed of such developments. He had already communicated to respondent his knowledge about the underlying incident. His further assistance was not needed in responding to the request. Finally, there was no showing that any different steps would have been taken, or that any different outcome achieved, had Mohammad been notified of the request.

The State Bar has failed to present clear and convincing evidence of a wilful violation of section 6068(m) by respondent as alleged in the NDC, and the court finds none. Accordingly, this count is dismissed with prejudice.

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[22] Mohammad is an elderly man for whom English is a second language. Although he has been in this country for many years and is able to speak some English, he indicated at trial that he preferred to testify through an interpreter. He was frequently confused while testifying. His recollections of what happened when he called respondent's office were conflicting and shown to be incorrect. His demeanor also made clear that he was more intent on making his charges stick against respondent than responding directly and accurately to the questions asked of him. Whether the source of the deficiencies of his recollections relates to his age, to his difficulty communicating, to his motivations, or to some other source, his demeanor and poor recollection caused this court to conclude that the reliability of his testimony was very low.

[23] On further examination, he subsequently indicated that he did not recall seeing the letter. See footnote 22, above.

Case No. 06-O-14570

Facts

In August 2004, Abdul Waseh ("Waseh") employed respondent to represent him in a personal injury matter that occurred on August 27, 2004. Waseh also sought treatment from Dr. Tayebaty as a result of the incident.

As noted, sometime prior to the summer of 2006, there had been a falling out between respondent and Dr. Tayebaty. On July 5, 2006, Dr. Tayebaty wrote a letter to respondent regarding Waseh's action. The letter asked whether the case had settled, asked for a copy of the settlement draft, and threatened to turn Waseh's bill over to collection if respondent did not respond within 5 days. No action had even been filed at that time on behalf of Waseh.

Approximately one month later, Waseh retained Scott Meyers, Esq. ("Meyers") to replace respondent as his attorney. Meyers testified at trial that Waseh had indicated to him that part of the reason for this decision to terminate respondent was Waseh's concern about the dispute between respondent and the doctor. Meyers had also worked on cases with Dr. Tayebaty in the past.

On or about August 9, 2006, Meyers prepared and had Waseh sign an informal substitution of attorneys, notifying respondent that he had been replaced on the account and directing him to forward his file to Meyers. Meyers typed the letter himself but left it to others to see that the letter was mailed. Whether it was actually mailed properly or not is unclear. What is clear is that respondent did not receive it. Instead, on August 23, 2006, respondent filed an action in the Los Angeles Superior Court on Waseh's behalf, apparently advancing the filing fee himself. At about the same time, Meyers was also filing an action on Waseh's behalf. Had respondent received the August 9 letter, and known that he had been replaced with an attorney

who was in a position to file a timely complaint on Waseh's behalf, he would not be expected to have made the investment of time and money in filing a complaint on Waseh's behalf.

On September 20, 2006, Meyers contacted respondent's office and then sent an email message to follow-up. The email indicated that Meyers would be re-faxing the "sub out letter." In the message Meyers stated that he had sent respondent this substitution of attorneys on August 8, 2006, which was clearly inaccurate, since the substitution was not even signed until August 9.

Shortly after the email message was sent, respondent talked by phone with Meyers and indicated that the file would be sent when a substitution from the client was received. When respondent had not received the substitution by September 23, he sent an email to Meyers politely letting him know that it had not yet been received. Meyers then forwarded the informal substitution that same day.

Because respondent was then formally counsel of record in the lawsuit that he had just filed on behalf of Waseh, he insisted that Waseh and Meyers provide him with a formal substitution of attorneys that could be filed in that action before he would release his entire file. Respondent then forwarded to Meyers a copy of the complaint so that a proper substitution could be prepared. Respondent then turned the matter over to an associate attorney in his office, Ms. Emami, who had previously been assigned responsibility for the *Waseh* lawsuit. He gave instructions to Ms. Emami to forward the entire file to Meyers as soon as the substitution was received. There were actually very few other documents in the file.

Despite the earlier statements in Meyers' letters that it was urgent that he receive the Waseh file immediately, he did not prepare the formal substitution until at least the end of October, and he then did not send it to respondent until November 27, 2006. He then forwarded the substitution to respondent with his own signature undated. Once received, the substitution was immediately signed by respondent on November 27, 2006, filed by respondent with the

court on November 30, 2006, and returned to Meyers. Respondent's office also forwarded the entire file to Meyers.

This did not signal the end any dispute between Meyers and respondent's office but instead sparked the beginning of it. Unfortunately there was very little contained in the file. Meyers understood (correctly) that respondent had previously sent an investigator to the accident site to conduct an investigation and to take photos, but there was neither a report nor photos in the file. Meyers was convinced (incorrectly) that respondent was improperly withholding these items. Meyers then made that belief widely and loudly known. At the same time, Waseh had filed a separate complaint with the State Bar which respondent's office regarded to be bogus. Meyers was very aware of the complaint, threw it into his discussions with respondent and Ms. Emami, repeatedly accused respondent and Emami of unethical conduct, and was himself actively complaining to the State Bar investigators. He was also actively discussing the situation with Dr. Tayebaty.

The real focus of Meyers' criticism was in his accusation that respondent had photographs that might be helpful. Although respondent repeated told him, orally and in writing, that he never had received any photos from the investigator, Meyers refused to believe him, repeatedly stating that respondent had previously admitted to having photos. Meyers also made clear to respondent's office that he was sharing his complaints with the State Bar and, in turn, was being provided with information by the State Bar's investigator. Indeed, it was revealed during the trial of this matter that one of Meyers' accusatory letters was written on the very same day that he was meeting with the State Bar's investigator.

In fact, respondent had never received any photos from the investigator. Nor had he received the investigator's report. As explained by witnesses during the trial, Waseh's lawsuit was based on accusations that he had been injured by a dangerous wooden shopping cart. These

wooden carts, however, had been removed from the defendant's premises before the investigator arrived with his camera. As a result, the photos and report resulting from the investigator's trip to the premises were of no value. Respondent thus made the decision in 2006 that it was not worth his client's money to invest in these photos or to pay for a copy of the report. His relationship with the investigator allowed him to make that decision.

Significantly, Meyers admittedly made the same decision when he finally talked with the investigator in the summer of 2007. Respondent had given him the investigator's name and number, so that he could find out about the photos. This investigator also told Meyers in 2007 that respondent had never been provided with either the report or the photos.

The State Bar eventually stipulated during the trial that respondent's file never contained any photographs. Given that the State Bar filed an amended NDC even as the trial was beginning that continued to allege that respondent's file contained photographs received from the his 2007 conversation with the investigator. [24]

Count 15 – Rule 3-700(D)(1) (Failure to Release File)

Rule 3-700 obligates an attorney at the termination of employment to release promptly to the client, on request, all of the client's papers and property.

The NDC alleges that Meyers wrote to respondent on August 9, 2006, requesting Waseh's file, and that respondent never responded to that letter. It further alleges that the Waseh file contained photographs that showed how the accident occurred; that Meyers repeatedly requested the file and those photographs, but that they were never provided.

[24] Indeed, Meyers went through his entire direct examination without disclosing either his conversation with the investigator or the fact that he had learned that the photos were worthless and had elected not to get them. Instead, at the conclusion of Meyers' testimony the picture Meyers painted for this court was that respondent had told him that there were photos in his file but that respondent nonetheless failed to provide them, despite numerous requests. The court was also presented with letters from Meyers in which he claimed that respondent's withholding of the materials was harmful to Waseh's case. These were highly misleading impressions for Meyers to convey at the time that testimony was being given.

The State Bar has failed to present clear and convincing evidence supporting these charges.

Respondent testified credibly and accurately that everything that was in the file was provided to Meyers. This testimony was corroborated by the credible testimony of his former paralegal, by the paperwork generated at the time, and ultimately by the testimony of Meyers. At trial it was stipulated that respondent had responded to Meyers' request in writing on September 23, 2006, memorializing a prior oral conversation. It was also stipulated that the file never contained any photographs.

Meyers' conduct, during both the underlying dispute and during his testimony, as reflected in both his words and demeanor, makes clear that he is unduly biased, is not a reliable historian regarding these events, and is instead more interested in prevailing in the prior argument with respondent than in learning or presenting the true facts. The court finds his testimony that he never received any document from respondent's office, other than the signed and filed substitution, to be not credible.

The court finds that respondent did not wilfully violate his duties under rule 3-700 as alleged in the NDC. Accordingly, this count is dismissed with prejudice.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).) [25]

Significant Harm

Respondent failed to pay the medical bill of Dr. Ghassemi, despite a request from his client that he do so. Although he has reached an agreement with the underlying parties to pay

[25] All further references to standard(s) are to this source.

that bill, he was still in the process of making arrangements to do so at the time of the trial. For purposes of determining the appropriate discipline to fashion to address this admitted misconduct, the court views this to be an aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).)

No Prior Discipline

Respondent has practiced law in California only since 2000. Although he has no prior history of discipline, the relatively short duration of his practice, whether before the instant misconduct began and/or after it was rectified, does not qualify him for mitigation credit under standard 1.2(e)(i).

Cooperation and Candor

Respondent entered into an extensive stipulation of facts and freely admitted culpability for the one count for which culpability has been found. For that candor and cooperation respondent is entitled to mitigation credit. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.)

Remorse and Remediation

In addition to acknowledging culpability for the misconduct underlying count 1, above, respondent has credibly expressed remorse for it. In addition, even before the formal charges were filed, he voluntarily attended the State Bar's Client Trust Accounting School, and he implemented significant changes to his office's file maintenance, accounting, and operating procedures. Such attitudes and activities provide a strong indicator that the risk of repetition of the misconduct is significantly reduced. Accordingly, the court affords him mitigation credit pursuant to standard 1.2(e)(vii).

Character Evidence

Respondent made an extraordinary demonstration of good character with testimony from a large number of witnesses. The witnesses represented a wide range of references of different sources, including former clients and other practicing attorneys.

The testimony regarding respondent's character and background was consistent and heartfelt. He is a remarkable man. A former immigrant to this country, he now holds two bachelor degrees, an MBA, a PhD, a JD, and an LLM. He has taught accounting and law-related classes at numerous colleges and universities in Southern California, including UCLA, USC, and CSU-Northridge. His former and current clients consistently described his strong work ethic, his concern for his clients, and his eleemosynary attitude when they had difficulty being able to afford to pay an attorney to resolve their personal problems. The evidence was clear and convincing that he is a man of recognized integrity and a very solid attorney.

The State Bar asks this court to disregard the testimony of these witnesses on the basis that their knowledge of the pending charges was based primarily on what the State Bar had included in its Pretrial Statement. It complains that the witnesses did not talk with respondent about the charges. This argument lacks merit. The use of pretrial statements to disclose to character witnesses the nature of the charges of misconduct against a respondent has repeatedly been noted with apparent approval in published decisions of this court. (See, e.g., *In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 50; *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883, 890.) The State Bar cites to no contrary authority. Why the use of the State Bar's Pretrial Statement here would be objectionable to the State Bar remains unexplained. It had an obligation to set forth in its statement the nature of charged misconduct and the law and evidence supporting those charges. (See Rules of Practice of the State Bar Court, rule 1224.) It ably did that. That the possible impact that those charges might have on the

character witnesses was not diminished by respondent simultaneously saying to the witnesses that the charges were unjustified is to be commended here, not criticized.

The court affords respondent significant mitigation credit on this issue. (Std. 1.2(e)(vi).)

IV. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *In the Matter of Van Sickle, supra*; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The standard of discipline applicable to the above finding that respondent violated rule 3-110(A) is standard 2.4(b). This standard provides: "Culpability of a member of wilfully failing

to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."

Respondent has suggested that the application of this standard to his stipulated misconduct and circumstances warrants no more than a public reproval. This court agrees, concluding that a public reproval is the necessary and appropriate discipline to impose. While respondent's prior misconduct cannot be ignored or condoned, there is little chance that it will be repeated by respondent.

The demonstrated harm here was not suffered by respondent's direct client, but by a medical doctor entitled to be paid by that client. Adding a condition of reproval requiring respondent to demonstrate in the very near future that the harmful consequences of his misconduct have been redressed by him is also appropriate. That condition is set forth below.

V. DISCIPLINE

Accordingly, it is ordered that respondent **KHOSRO REGHABI** is hereby publicly reproved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the reproval shall be effective when this decision becomes final. Further, pursuant to rule 9.19 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the conditions specified below being attached to the reproval imposed in this matter. Failure to comply with any of the conditions attached to this reproval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct.

Respondent is hereby ordered to comply with the following conditions[26] attached to his public reproval for a period of one year following the effective date of the reproval imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

2. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained,* an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

3. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates).[27] However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

[26]See rule 271, Rules of Proc. of State Bar (motions to modify conditions attached to reprovals are governed by rules 550-554 of the Rules of Procedure).

[27] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

(a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period. During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

4. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

5. Within one year after the effective date of this order, respondent must attend and satisfactorily complete (a) the State Bar's Ethics School and he must provide satisfactory proof of such completion to the State Bar's Office of Probation within that same timeframe.[28] This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

[28] This court would ordinarily consider requiring respondent to attend the State Bar's Client Trust Accounting School. However, because respondent voluntarily attended that program in 2007 as a consequence of the State Bar's investigation of this matter, the court concludes that any such additional obligation would be unnecessary.

6. Respondent must take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

7. Within ninety (90) days of the effective date of this order, respondent must make restitution to Dr. Romina Glassemi in the amount of $2,000, plus 10% interest per annum from January 16, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Dr. Glassemi), and furnish satisfactory proof thereof to the State Bar's Office of Probation.

8. Respondent's probation will commence on the effective date of this order imposing discipline in this matter.

VI. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

Dated: February _____, 2009

DONALD F. MILES
Judge of the State Bar Court